

AN ACT

ENTITLED, An Act to clarify the scope and composition of peer review committees entitled to limited good faith immunity from civil liability for committee actions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 36-4 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, a peer review committee is one or more persons acting as any committee of a state or local professional association or society, any committee of a licensed health care facility or the medical staff of a licensed health care facility, or any committee comprised of physicians within a medical care foundation, health maintenance organization, preferred provider organization, independent practice association, group medical practice, provider sponsored organization, or any other organization of physicians formed pursuant to state or federal law, that engages in peer review activity. For the purposes of this Act, a peer review committee is also one or more persons acting as an administrative or medical committee, department, section, board of directors, shareholder or corporate member, or audit group, including the medical audit committee, of a licensed health care facility.

Section 2. That chapter 36-4 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, peer review activity is the procedure by which peer review committees monitor, evaluate, and recommend actions to improve the delivery and quality of services within their respective facilities, agencies, and professions, including recommendations, consideration of recommendations, actions with regard to recommendations, and implementation of actions. Peer review activity and acts or proceedings undertaken or performed within the scope of the functions of a peer review committee include:

- (1) Matters affecting membership of a health professional on the staff of a health care facility or agency;
- (2) The grant, delineation, renewal, denial, modification, limitation, or suspension of clinical

privileges to provide health care services at a licensed health care facility;

- (3) Matters affecting employment and terms of employment of a health professional by a health maintenance organization, preferred provider organization, independent practice association, or any other organization of physicians formed pursuant to state or federal law;
- (4) Matters affecting the membership and terms of membership in a health professional association, including decisions to suspend membership privileges, expel from membership, reprimand, or censure a member, or other disciplinary actions;
- (5) Review and evaluation of qualifications, competency, character, experience, activities, conduct, or performance of any health professional, including the medical residents of health care facility; and
- (6) Review of the quality, type, or necessity of services provided by one or more health professionals or medical residents, individually or as a statistically significant group, or both.

Section 3. That § 36-4-25 be amended to read as follows:

36-4-25. There is no monetary liability on the part of, and no cause of action for damages may arise against, any member of a duly appointed peer review committee engaging in peer review activity comprised of physicians licensed to practice medicine or osteopathy under this chapter, or against any duly appointed consultant to a peer review committee or to the medical staff or the governing board of a licensed health care facility for any act or proceeding undertaken or performed within the scope of the functions of the committee, if the committee member or consultant acts without malice, has made a reasonable effort to obtain the facts of the matter under consideration, and acts in reasonable belief that the action taken is warranted by those facts. The provisions of this section do not affect the official immunity of an officer or employee of a public corporation.

Section 4. That § 36-4-26.1 be amended to read as follows:

36-4-26.1. The proceedings, records, reports, statements, minutes, or any other data whatsoever, of any committee described in section 1 of this Act, relating to the quality, type, or necessity of care rendered by a member of a hospital medical staff or by hospital personnel, or acquired in the evaluation of the competency, character, experience or performance of a physician, dentist or allied health professional seeking admission or reappointment to the medical staff of a hospital, are not subject to discovery or disclosure under chapter 15-6 or any other provision of law, and are not admissible as evidence in any action of any kind in any court or arbitration forum, except as hereinafter provided. No person in attendance at any meeting of any committee described in section 1 of this Act shall be required to testify as to what transpired at such meeting. The prohibition relating to discovery of evidence does not apply to deny a physician access to or use of information upon which a decision regarding the person's staff privileges or employment was based. The prohibition relating to discovery of evidence does not apply to deny any person or the person's counsel in the defense of an action against that person access to the materials covered under this section.

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I certify that the attached Act
originated in the

SENATE as Bill No. 139

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 139
File No. _____
Chapter No. _____

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Received at this Executive Office
this ____ day of _____ ,

19__ at ____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 19__

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 19__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State